

 DEPARTMENT OF ENVIRONMENTAL QUALITY	LAND & WATER MANAGEMENT DIVISION	NUMBER: 307-95-01
	OPERATING PROCEDURE	DATE: 09/28/95 REV. DATE: 07/01/07
SUBJECT: Dam Safety Program, Inland Lake Level Hearings		PAGE:
SECTION AND/OR UNIT: Dam Safety Unit	APPROVAL SIGNATURE:	ALSO SEE:
	TITLE: Elizabeth Browne, Chief Land and Water Management Division	

PURPOSE:

Normally the Department of Natural Resources' (DNR) Office of Legal Services is the lead agency for lake level hearings. This procedure provides instruction for professional staff on the process for the determination of the need for a Department of Environmental Quality (DEQ) position statement for an Inland Lake Level hearing pursuant to Part 307, Inland Lake Levels, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

APPLICABLE STATUTES:

DEFINITIONS:

DAG	Department of Attorney General
DSP	Dam Safety Program
Design Flood	The design flow rate for spillway capacity and dam height design
LWMD	Land and Water Management Division
Part 307	Part 307, Inland Lake Levels, of the NREPA
Part 315	Part 315, Dam Safety, of the NREPA

FORMS USED:

Memorandum of Understanding (MOU) between the Department of Environmental Quality and the Department of Natural Resources, Inland Lake Levels, Transition Agreement #27, MOU #13.

INSTRUCTIONS:

Responsibility

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| DNR, Unit of County Government, or County Official | 1. Notify the DEQ at least three weeks before a Circuit Court action to have a lake level established, abandoned, or modified under the authority of Part 307. |
| DSP Staff | 2. Make a copy, if the DEQ receives a notice directly, and forward the original notice of the lake level hearing to the DNR Legal Services Coordinator. |

This document provides guidance to DEQ staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law.

Responsibility

Action

3. Prepare a memorandum for the Land and Water Management Division (LWMD) Chief's signature requesting comments from the Water Bureau, Remediation and Redevelopment Division, Waste and Hazardous Materials Division, the LWMD Wetlands and Submerged Lands Unit, and the appropriate LWMD District Office. The memorandum includes a response date and any available information regarding past history and possible impacts that the proposed lake level will have. Send courtesy copies of the memorandum to the Environment, Natural Resources and Agriculture Division of the Department of Attorney General.

DSP Staff

4. Review notice and responses from Item 3 above, and determine if the DEQ should present a position statement to the Circuit Court. The DEQ would prepare a position statement if there are regulatory or dam safety issues the court should be aware of as it makes its decision. If a position statement is not required, Steps 6 through 11 are unnecessary. The following are examples of when the DEQ may want to provide a position statement.
 - i. The lake has an existing or proposed dam that meets the minimum size criteria for regulation under Part 315.
 - ii. The dam is in need of significant repairs.
 - iii. The dam does not have adequate spillway capacity.
 - iv. The special assessment district authorized by Part 307 will provide the necessary funding mechanism to pay for needed repairs.
 - v. A minimum release from the lake is required to ensure adequate dilution of effluent from a sewage treatment facility.
 - vi. The level will have significant impact on natural resources, such as flooding wetlands or reducing stream flows.
 - vii. The project will require permits under Part 301, Inland Lakes and Streams, or Part 303, Wetlands Protection, of the NREPA.
5. Send any information regarding resource issues to the DNR Legal Services Coordinator.
6. Evaluate the spillway capacity of the dam for the appropriate design flood as prescribed in Part 315 if proposed dam meets the minimum size criteria for regulation under Part 315.

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Responsibility

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| | 7. Coordinate their findings with the LWMD district engineering staff to determine if proposed flood stages will have an adverse impact on established floodplain elevations. |
| DSP Staff and DAG | 8. Prepare position statement in accordance with guidelines noted above. |
| Division Chief | 9. Approve the DEQ position statement. |
| DSP Chief and DAG | 10. Decide if the Department of Attorney General will provide counsel, or if an arrangement can be made with the local prosecuting attorney's office for counsel in the matter. Notify the DNR Legal Services Coordinator that we have issues to present to the court. |
| DSP Staff | 11. Attend Circuit Court hearing, present the position statement, and testify for the DEQ regarding the preparation of the position statement and any other technical information that may be available as a result of the request for comments. If necessary, other DEQ staff may provide expert testimony at the hearing. |
| County Prosecutor or DAG | 12. Provide a copy of the court decision to the DSP staff regarding the establishment of a lake level. |
| DSP Staff | 13. Place the court decision in the lake level file for the dam, and pertinent data is entered into the Dam Safety Database. |